

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

CRAIG CUNNINGHAM,

Plaintiff,

v.

USA AUTO PROTECTION, LLC, *et. al.*,

Defendants.

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Civil Action No. 4:20-CV-142-RWS-KPJ

ORDER

The above-titled and numbered action was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636. On February 3, 2022, the Magistrate Judge entered proposed findings of fact and a recommendation (the “Report”) (Docket No. 116) that Defendant Digital Media Solutions, LLC’s (“DMS”) Rule 12(b)(2) and/or Rule 12(b)(6) Motion to Dismiss (the “Motion”) (Docket No. 102) be granted and Plaintiff’s claims against DMS be dismissed without prejudice.

Because no objections to the Magistrate Judge’s Report have been filed, neither party is entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except on grounds of plain error, they are barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending time to file objections from ten to fourteen days). Nonetheless, the Court has reviewed the Motion (Docket No. 102) and the Magistrate Judge’s Report (Docket No. 116) and agrees with the Report. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the

sound discretion of the judge warrants.’ ”) (quoting *Mathews v. Weber*, 423 U.S. 261, 275 (1976). Accordingly, it is hereby

ORDERED that the Magistrate Judge’s Report (Docket No. 116) is **ADOPTED** as the opinion of this Court. DMS’s Motion (Docket No. 102) is **GRANTED** and Plaintiff’s claims against DMS are **DISMISSED WITHOUT PREJUDICE**. The dismissal of these claims shall have no effect upon the Plaintiff’s claims against the remaining defendants in the lawsuit.

So ORDERED and SIGNED this 4th day of March, 2022.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE